

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
LANG BROTHERS ENTERPRISES, INC.,

Appellant,

**V.**

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 80-51

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of respondent's Section 400-035 of Regulation I came on for hearing before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and David Akana, member, at Longview, Washington, on June 30, 1980. Hearing Examiner William A. Harrison presided. There being no election the hearing was informal.

RCW 43.21B.230.

Appellant appeared by its Vice President, Dale Lang. Respondent appeared by its attorney James D. Ladley. Reporter Thomas Archer

1 recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From  
3 testimony heard and exhibits examined, the Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
7 a certified copy of its General Regulations For Air Pollution Sources  
8 containing respondent's regulations and amendments thereto.

9 II

10 On March 10, 1980, appellant was constructing a home at 15507 NE  
11 25th Avenue, Vancouver, Washington. Appellant's employees ignited a  
12 fire for the purpose of warming themselves. The appellant therefore  
13 caused or allowed the outdoor fire in question.

14 III

15 The fire was some 6 feet by 4 feet in expanse and 1-1/2 feet  
16 high. It contained metal cans, cardboard boxes, wood scraps and  
17 general construction debris. The fire emitted smoke.

18 IV

19 Appellant had neither applied for nor obtained an open burning  
20 permit from respondent.

21 Respondent's inspector arrived at the site of the fire and  
22 observed that the dimensions and content of the fire were as described  
23 above. The appellant later received a formal Notice of Violation  
24 citing the violation of respondent's Section 400-035 of Regulation I  
25 and imposing a civil penalty of \$250. From this, appellant appeals

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

1 V

2 The appellant read a newspaper article concerning rules for  
3 outdoor burning (Exhibit R-3) after this fire occurred. Appellant  
4 could not have and does not claim that it relied upon that article  
5 when it ignited the fire in question. The article would not have lead  
6 a reasonable person to believe that the fire in question was lawful.

7 VI

8 The appellant was previously cited for outdoor burning in  
9 violation of respondent's Regulation I in July, 1979. Respondent  
10 assessed a \$50 civil penalty which appellant paid.

11 VII

12 Any Conclusion of Law which should be deemed a Findings of Fact is  
hereby adopted as such.

14 From these Findings the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 The Legislature of the State of Washington had enacted the  
18 following policy on outdoor fires:

19 It is the policy of the state to achieve and maintain  
20 high levels of air quality and to this end to minimize  
21 to the greater extent reasonably possible the burning  
22 of outdoor fires. Consistent with this policy the  
legislature declares that such fire should be allowed  
only on a limited basis under strict regulation and in  
close control (RCW 70.94.740).

23 The respondent has adopted its Regulation I, Section 400-035 which  
24 provides in relevant part:

25 No person shall ignite, cause to be ignited, permit to  
be ignited or suffer, allow or maintain any open fire  
within the jurisdiction of the Authority except as  
provided in this Regulation . . . (2) Open burning  
27 burning may be done under permit: . . ."  
(emphasis added)

1 Appellant failed to obtain an open burning permit from respondent and  
2 violated respondent's Regulation I, Section 400-035(2). Appellant did  
3 so knowingly.

4 II

5 Because the violation committed by appellant caused only a limited  
6 emission of air contaminant, the penalty should be mitigated in part  
7 by suspension.

8 III

9 Any Finding of Fact which should be deemed a Conclusion of Law is  
10 hereby adopted as such.

11 From these Conclusions the Board makes this

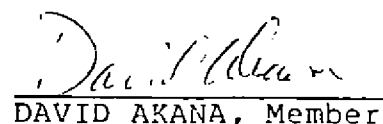
12 ORDER

13 The \$250 civil penalty is affirmed, provided however, that one  
14 half of the civil penalty is suspended on condition that appellant not  
15 violate respondent's open fire regulations for a period of one year  
16 from the date of appellant's receipt of this Order.

17 Dated this 11<sup>th</sup> day of July, 1980.

18 POLLUTION CONTROL HEARINGS BOARD

19  
20   
21 NAT W. WASHINGTON, Chairman

22   
23 DAVID AKANA, Member